



12-207-61 RECEIVED 3618

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| | Group Art Unit | 3618 | |
| | Examiner Name | Bridget Avery | |
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| SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT | |
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| Firm or Individual name | Alex Rhodes, Reg. No. 26,797 |
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#17
Appeal Brief
1-3-02



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

RECEIVED
DEC 28 2001
GROUP 3600

Ex parte JOSEPH J. BERKE et al.

Application No. 09/207,634
Appeal No. _____

AMENDED BRIEF OF APPELLANTS

Commissioner for Patents
Washington, D.C. 20231

Sir:

This is an appeal under 35 U.S.C. §134 of the Examiner's final rejection of claims 5-10, 12-14 and 20-28. Apparatus claims 1-4 and method claims 15-19 were canceled without prejudice under a restriction requirement, as claims drawn to other classes. Claim 11 was allowed. The Amended Brief is filed in triplicate.

No fees are believed necessary. However, the Commissioner is hereby authorized to charge any necessary fees to my account No. 18-1166.

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(1)

TABLE OF AUTHORITIES

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Statutes

| | |
|---------------|----------------|
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|---------------|----------------|

OTHER

| | |
|-------------|-------|
| MPEP § 2141 | 11,12 |
|-------------|-------|

(2)

REAL PARTY IN INTEREST

The parties identified in the caption of the Brief are the real parties in interest pursuant to 37 CFR § 1.192(c)(1).

(3)

RELATED APPEALS AND INTERFERENCES

This application has been assigned. There are no appeals or interferences, pursuant to 37 CFR § 1.192(c)(2) which are known to Appellants, the Appellants' legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(4)

STATUS OF CLAIMS

There were two final rejections. In the first final rejection, claims 5-7, 10, 12, 20, 24, 25, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by Mascio (Italian Patent 574,172); claims 8 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mascio ('172) in view of Perez ('889); claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson ('434) and Harmon et al. ('041) as applied to claim 5, and further in view of Hsieh et al. ('037); and claims 21-23 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson ('434) and Harmon et al. ('041) as applied to claim 5, and further in view of White ('950).

The Examiner withdrew the final rejection and issued a second final rejection supported by other references after Applicants forwarded a translation of Mascio which showed that Mascio did not apply to the claimed inventions. Copies of Mascio and the translation are in the Appendix. The second final rejection of claims 5-10, 12-14, and 20-28 is the subject of this appeal.

(5)

THE EXAMINER'S REFERENCES

The references of record which were relied on by the Examiner as evidence of obviousness are:

| | <u>U.S. Patents</u> | |
|---------------|---------------------|---------|
| Hsieh, et al. | 5,951,037 | 09/1999 |
| Faraj | 5,697,624 | 12/1997 |
| White | 5,621,950 | 04/1997 |
| Brown | 5,301,393 | 04/1994 |
| Perez | 4,989,889 | 02/1991 |
| Anderson | 4,448,434 | 05/1984 |
| Arias et al. | 4,261,447 | 04/1981 |
| Smith | 4,044,784 | 08/1977 |
| Harmon | 524,041 | 08/1894 |

(6)

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the most recent final rejection.

(7)

SUMMARY OF THE INVENTION

This invention relates to carriers and more particularly to a wheeled cart 51 with a removable carrier 50 for closing and transporting closed bags or sacks, filled with loose or granular materials, such as salt, sand, trash, fertilizer and cement (page 7, lines 17-24).

The carrier 50 and cart 51 are depicted in Figures 7 through 18 of the drawings. The object of the invention is to replace the current practices of cradling, gripping and resting large bags on shoulders which are often open and cause spillage, soiled clothes and/or physical injuries. This condition is particularly serious with women and elderly persons who constitute an increasing portion of the population. Heavy bags and sacks need only to be elevated by a small amount to transport them with the invention. Bags are clamped in a pair of jaws 55, 61 with eye bolts 62 and thumb screws 63.

The cart 51 is a 2-wheel cart (Figures 10-12) having a foldable lower shelf 54 (Figures 11-12) and its height is adjustable such that different bags can be placed on the shelf 54 and gripped by the carrier 50 (page 7, lines 22-24). The carrier 50 has a pair of elongated pivotally connected jaws 55, 61 and a handle formed in one of the jaws 55. At least one of the elongated jaws 55, 61 has a plurality of small pointed tabs 33 which protrude for gripping bags (Figures 7-8). An important feature is that the carrier 50 can

be detached and used separately. The manner of using the carrier 50 and cart 51 is shown in Figures 16 and 18. The foldable design facilitates storage and transportation of the carrier 50 and cart 51.

(8)

GROUPING OF CLAIMS (37 C.F.R. 1.192(c)(5))

Group I - Claims 5-9, 12, 24 and 27

Group II - Claim 13

Group III - Claims 10, 14, 25 and 28.

Group IV - Claims 20, 21, 22, 23, 26

GROUP 1 CLAIMS

The Group I claims 5-9, 12, 24 and 27 are drawn to the combination of a cart and a bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack and a handle attached to one of the jaws. The Group 1 claims stand or fall together.

GROUP II CLAIM

The Group II claim 13 which depends from claim 5 is drawn to the combination of a cart and a bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack, a handle attached to one of the jaws and a pair of bolts and thumb nuts for clamping the jaws.

GROUP III CLAIMS

The Group III claims 10, 14, 25 and 28 are drawn to the combination of a cart and a detachable bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack. The Group III claims stand or fall together

GROUP IV CLAIMS

The Group IV claims 20, 21, 22, 23 and 26 are drawn to the combination of a cart and a releasable bag carrier having a pair of jaws with gripping surfaces for clamping an upper portion of a closed bag or sack. The Group IV claims stand or fall together.

(9)

ISSUES (37 C.F.R. 1.192(c)(4))

Issue I

Whether the Group I claims are unpatentable under 35 U.S.C. 103(a). over Faraj ('624) in view of White ('950) and alternatively over Faraj ('624) in view of Brown ('393).

Applicant says No

Claims 5-9, 12, 24 and 27 are drawn to the combination of a cart and a bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack and a handle attached to one of the jaws. Faraj ('624) discloses a shopping cart 10, resembling a walking cane which is comprised of a single support member 12, a single wheel 20, a curved handle 24 similar to an umbrella or cane, U-shaped or J-shaped hooks 26 for hanging open shopping bags on support member 12 and a hinged bracket 30 for

supporting a container such as a carton of soft drinks.

White ('950) discloses a small paper clip with protusions 38 for holding sheets of paper together (col. 1, lines 10-20 and col. 1, lines 50-56).

Brown ('393) discloses a small spring biased paper clip for combining sheets of paper and sealing bags (Fig. 12; col. 3, lines 56-57).

Neither Faraj, White nor Brown suggest or provide motivation for combining the shopping cart of Faraj with the paper clips of White or Brown. Nor would the combination be equivalent to the combination of a cart and a bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack and a handle attached to one of the jaws.

Moreover, it would be unnecessarily redundant to include in Faraj a second means for carrying a shopping bag.

Issue II

Whether the Group II claim is unpatentable under 35 U.S.C. 103(a) over Faraj ('624) in view of Brown ('393).

Applicant says No

Claim 13 which depends from claim 5 is drawn to the combination of a cart and a bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack, a handle attached to one of the jaws and a pair of bolts and thumb nuts for clamping the jaws. Claim 5 is not obvious over the cited references for the same reasons as the Group I claims and the positive limitation of the bolts and thumb nuts for clamping the pair of jaws.

Issue III

Whether claim 10 is unpatentable under 35 U.S.C. 103(a) over Faraj ('624) in view of White ('950) and alternatively over Faraj ('624) in view of Brown ('393).

Applicant says No

The Group III claims 10, 14, 25 and 28 were rejected under 35 U.S.C. 103(a) for the same reason as the Group I claims. The Group III claims are drawn to the combination of a cart and a detachable bag carrier having a pair of jaws for clamping an upper portion of a closed bag or sack. Neither Faraj nor Brown disclose or suggest the combination of a cart and a detachable carrier for carrying a closed bag. Nor is there any motivation in the references for combining Faraj with Brown. Nor is there any need or motivation in the references for providing a second means in Faraj for carrying an open shopping bag.

Issue IV

Whether claims 20, 21, 22, 23 and 26 are unpatentable under 35 U.S.C. 103(a) over Faraj ('624) in view of White ('950).

Applicant says No

Claims 20, 21, 22, 23 and 26 are drawn to the combination of a cart and a releasable bag carrier having a pair of jaws with gripping surfaces for clamping an upper portion of a closed bag or sack. Neither Faraj nor White disclose or supply any motivation for combining Faraj with White. Nor do Faraj or White provide any motivation for the addition of jaws with clamping surfaces in Faraj for carrying closed bags.

ARGUMENT 1.192(c)(6)

It is evident from the references that the Examiner failed to view the claimed inventions as a whole, employed impermissible hindsight vision and should be reversed for the following reasons. (Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966); M.P.E.P. § 2141). None of the cited references disclose carts with jaws for transporting closed bags or sacks. In Interconnect Planning Corporation v. Feil, et al. 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985), the Federal Circuit said: "Not only must the claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their significance to a technician at the time—a technician without our knowledge of the solution."

In In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed.Cir.19), the Federal Circuit said: "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See Carl Schenck, A.G. v. Nortron Corp., 713 F.2d 782, 787, 218 USPQ 698, 702 (Fed.Cir.1983), and In re Sernaker, 702 F.2d 989, 995-96, 217 USPQ 1, 6-7 (Fed.Cir.1983), both citing In re Imperato 486 F.2d 585, 587, 179 USPQ 730, 732 (CCPA 1973)".

The Examiner has fallen victim to what the Federal Circuit has characterized as "the insidious effect of a hindsight syndrome wherein that which only the inventor has taught is used against its teacher." W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). The Examiner relied on the paper clips of Brown ('393)

and White ('950) which are intended to hold sheets of paper together to modify the shopping cart of Faraj ('624) in which bags are hung on hooks without identifying any motivation or incentive in the references for combining or modifying the references.

(11)

CONCLUSION

It is evident that the Examiner's rejections fail to meet the standards of 35 U.S.C. 103 and M.P.E.P § 2141 and should be reversed. The weight of the evidence shows that the Examiner improperly determined the level of ordinary skill in the art by applying "impermissible hindsight" rather than the requirements of 35 U.S.C. 103 and M.P.E.P § 2141.

Although an Examiner is a person skilled in the art of examining patents, the Court has said obviousness rejections under 35 U.S.C. 103 must be based on what is obvious to a "person having ordinary skill in the art" rather than what is obvious to an Examiner after having the benefit of an Applicants' disclosure. In Interconnect Planning Corporation v. Feil, et al., 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985), the Federal Circuit said:

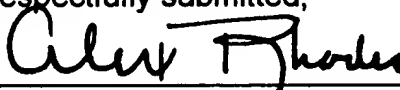
"The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time."

The Federal Circuit has held that complexity is not an indicia of non-obviousness. In In re Horn et al., 203 USPQ 909 (CCPA 1979), a decision which involved a simple invention, the Court said, "simplicity and hindsight are not proper criteria for resolving the obviousness issue". The Examiner failed to appreciate that Faraj ('624), the most relevant reference, teaches away from Applicants' invention rather than providing an incentive or

motivation for practicing the invention.

In view of the foregoing, it is requested that the Board affirm the correctness of Applicants' position and lift the Examiner's 35 U.S.C. 103(a) rejections of the claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Rhodes", is written over a horizontal line.

Alex Rhodes, Reg. No. 26,797
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30100 Telegraph Road, Suite 460
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(248) 646-4400

Dated: December 13, 2001

(12)

CLAIMS ON APPEAL

5. In combination with a cart, a carrier mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle attached to at least one of said jaws.

6. The combination set forth in claim 5 wherein said cart is a 2-wheel cart.

7. The combination set forth in claim 5 wherein said cart has a lower shelf for supporting said bag or sack,

8. The combination set forth in claim 7 wherein said shelf is selectively foldable from a vertical stored position to a horizontal load supporting position.

9. The combination set forth in claim 7 wherein said shelf is outwardly adjustable.

10. The combination set forth in claim 5 wherein said carrier is detachable from said 2-wheel cart.

12. The combination set forth in claim 5 wherein said cart has a height which is adjustable.

13. The combination set forth in claim 5 wherein said means for clamping said carrier to said bag or sack comprises a pair of bolts, each having one end portion pivotally attached to an end portion of one of said jaws and a thumb nut for engaging an opposite end portion of another of said jaws.

14. In combination, a 2-wheel cart, said cart having a tubular frame which is vertically adjustable, and a pivotable lower shelf portion attached to said frame which is selectably foldable from a vertical stored non-load supporting position to a horizontal load supporting position, and a carrier detachably mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, each of said jaws having a gripping surface for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, a means for said clamping and releasing said jaws from said upper portion of said closed bag or sack, and a handle attached to said carrier.

20. The combination set forth in claim 5 wherein at least one of said jaws has a gripping surface for retaining and supporting said upper portion of said closed bag or sack.

21. The combination set forth in claim 5 wherein said gripping surface of said jaw

is comprised of a plurality of small outward extending portions for retaining and supporting said closed bag or sack.

22. The combination set forth in claim 5 further comprising a thin metal strip attached to at least one of said jaws, said metal strip having a plurality of outward extending tabs for forming a gripping surface to retain and support said closed bag or sack; a means for clamping said jaws to and releasing said jaws from said upper portion of said closed bag or sack; and a handle attached to said carrier.

23. The combination as set forth in claim 22 wherein said outward extending tabs are triangular.

24. In combination, a cart having at least one pair of wheels for transporting said cart and a carrier mounted on said cart for supporting an upper portion of a closed bag or a sack on said cart, said carrier having a pair of jaws for clamping said upper portion of said closed bag or sack to said carrier; and a means for said clamping and said releasing of said jaws from said upper portion of said closed bag or sack.

25. The combination set forth in claim 24 wherein said carrier is detachably mounted on said cart.

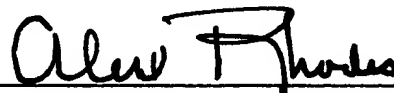
26. The combination set forth in claim 24 wherein at least each of said jaws has

a plurality of outward extending tabs for gripping said upper portion of said closed bag or sack.

27. The combination set forth in claim 24 further comprising a handle attached to said carrier.

28. In combination, a cart having at least one pair of wheels for transporting said cart and a closed bag or sack supporting carrier mounted on said cart for supporting an upper portion of a large closed bag or a sack containing quantities of loose and granular products, such as sand and trash on said cart, said closed bag or sack supporting carrier being releasable from said cart and having a pair of jaws for clamping and releasing said upper portion of said closed bag or sack from said carrier to carry .

Respectfully submitted,



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Dated: December 13, 2001

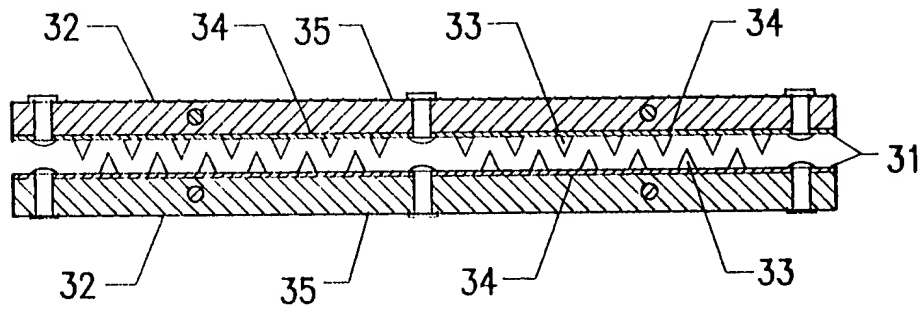


FIG. 4

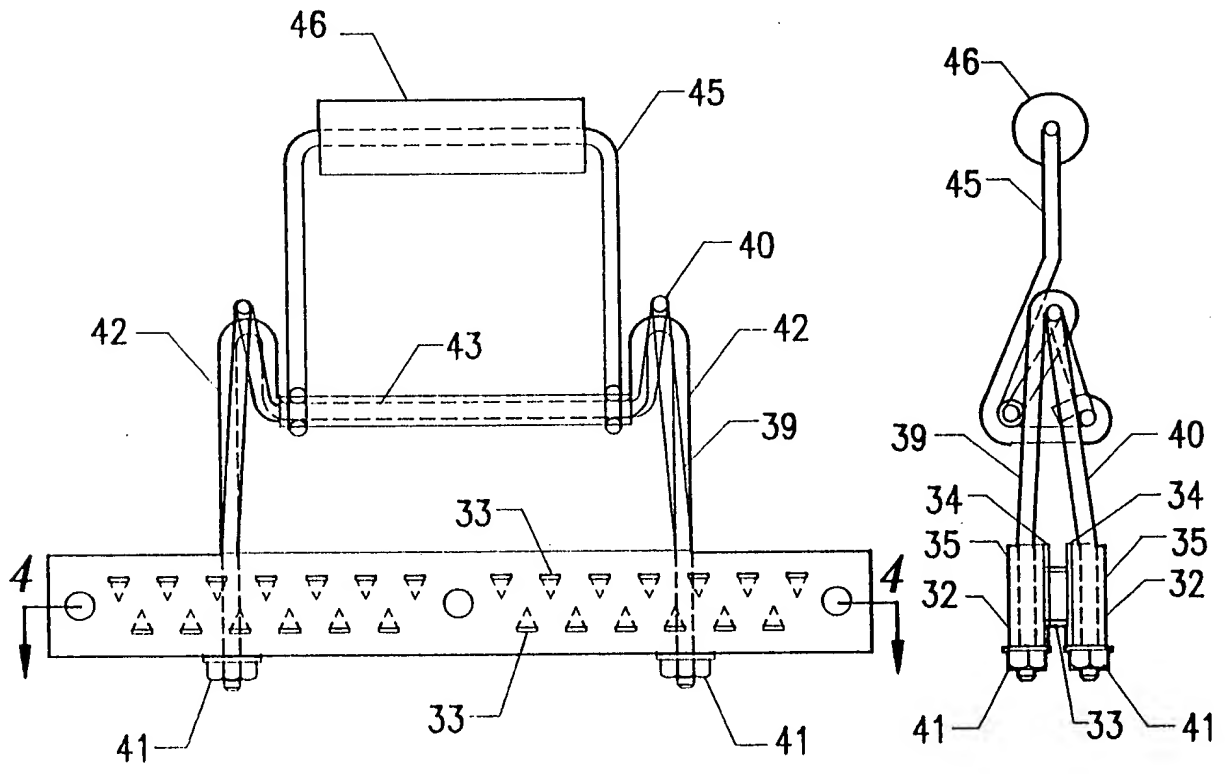


FIG. 1

FIG. 2



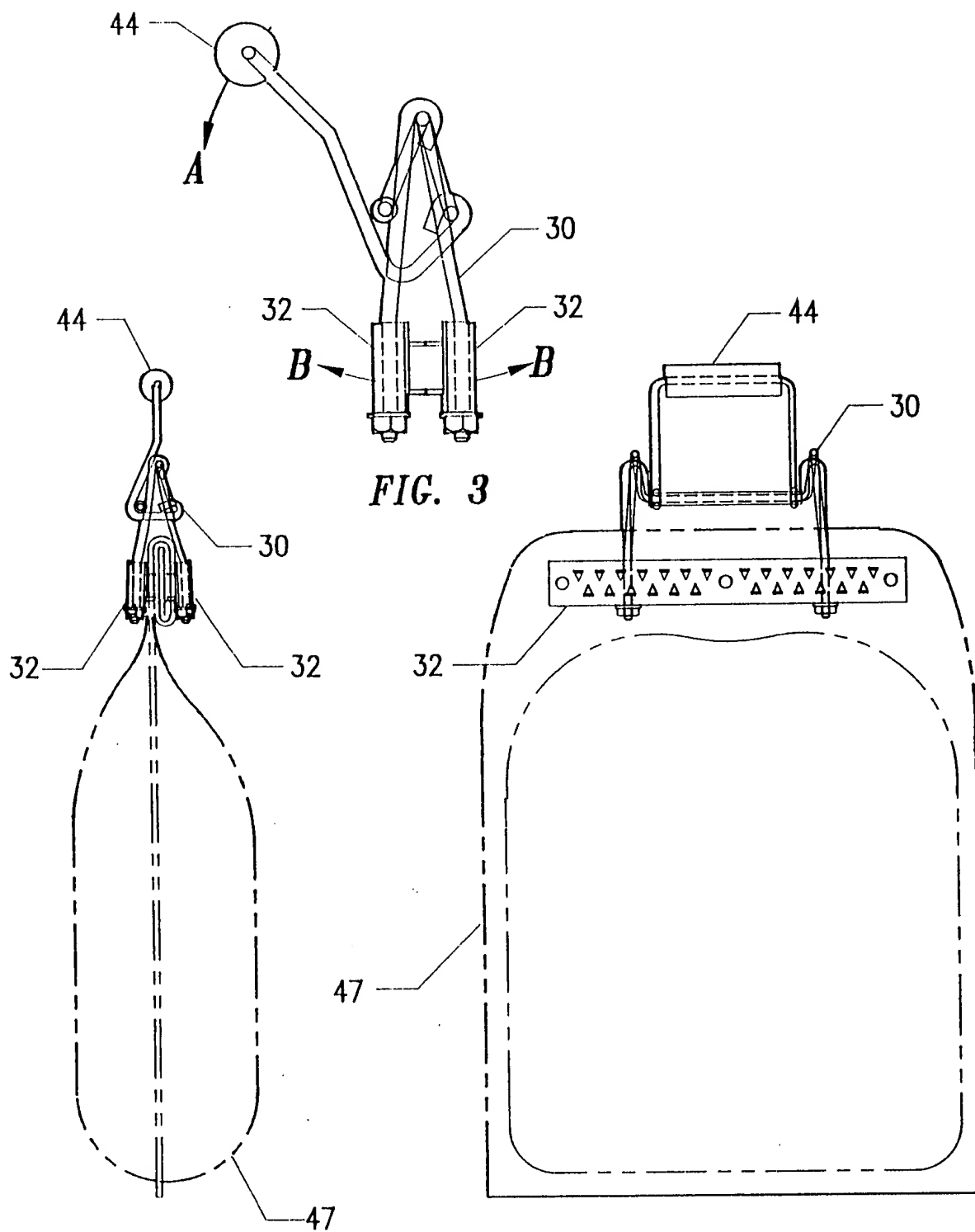


FIG. 6

FIG. 5

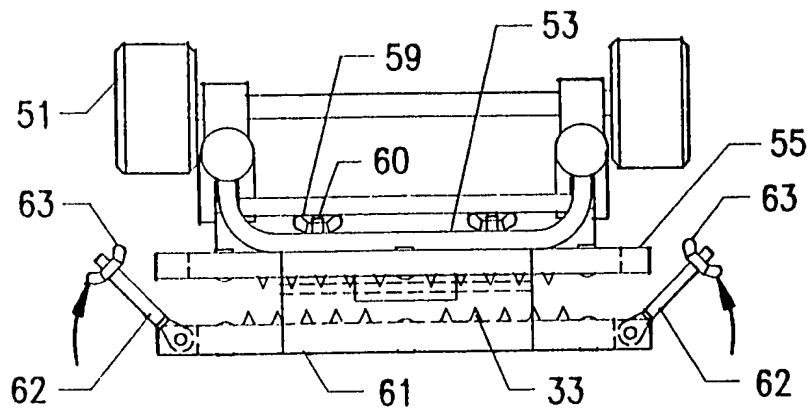


FIG. 7

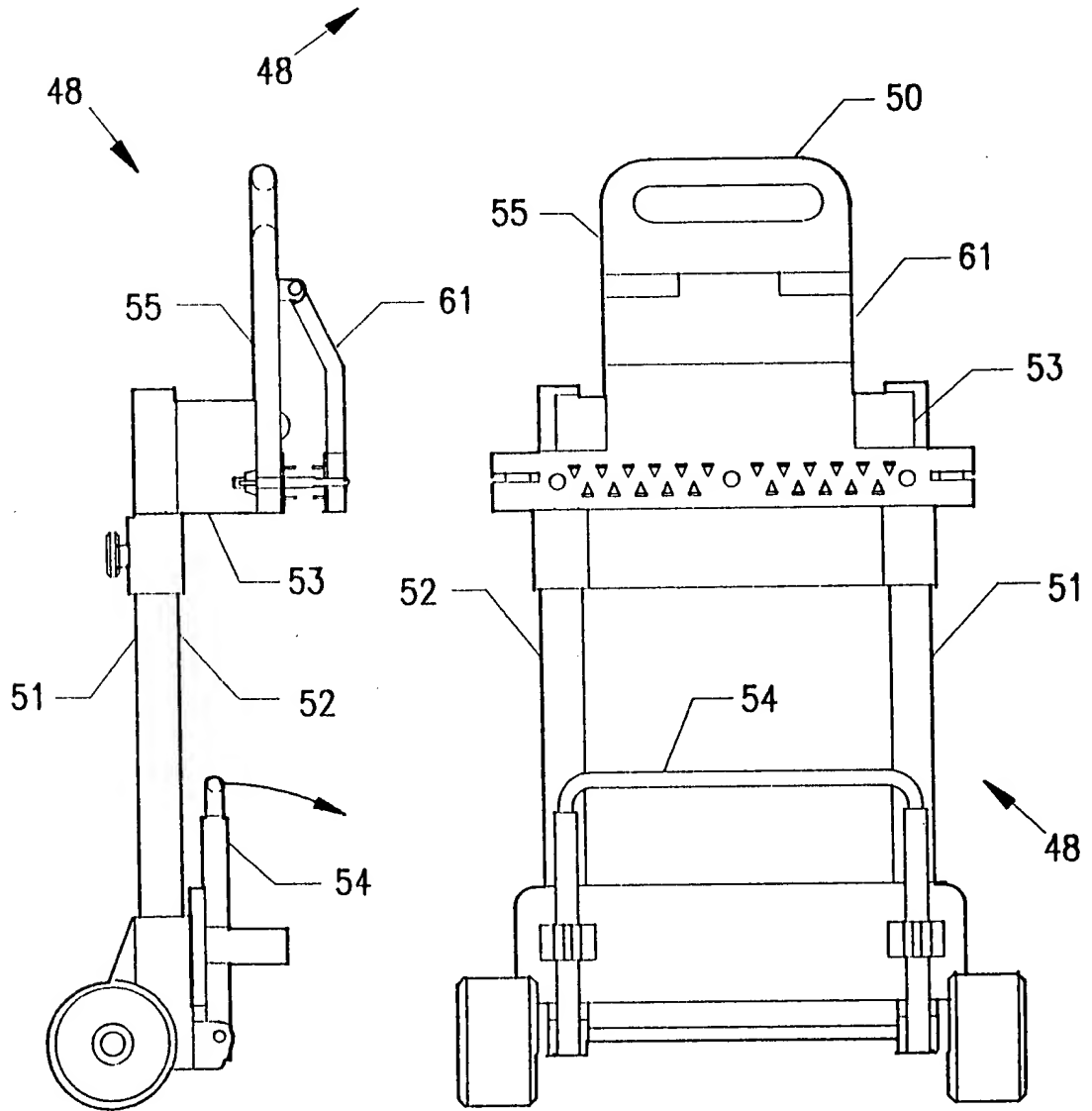


FIG. 9

FIG. 8

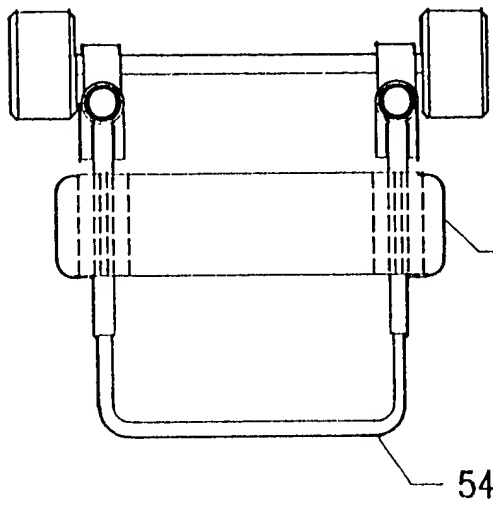


FIG. 13

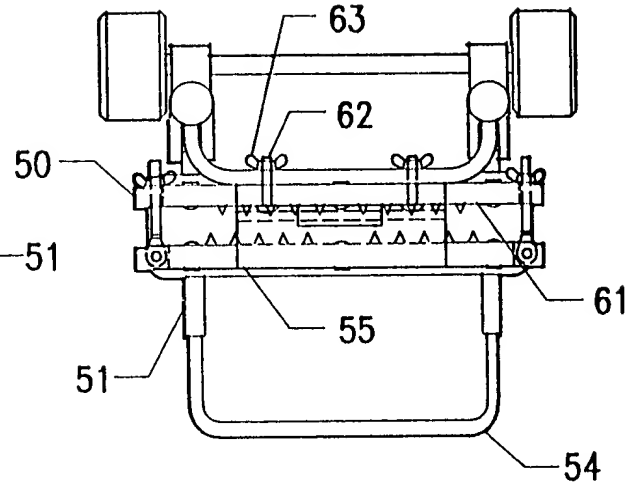


FIG. 10

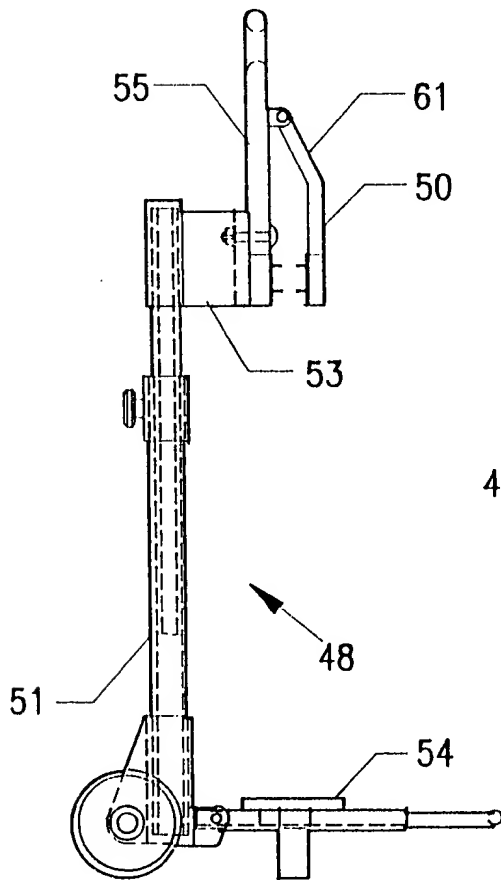


FIG. 12

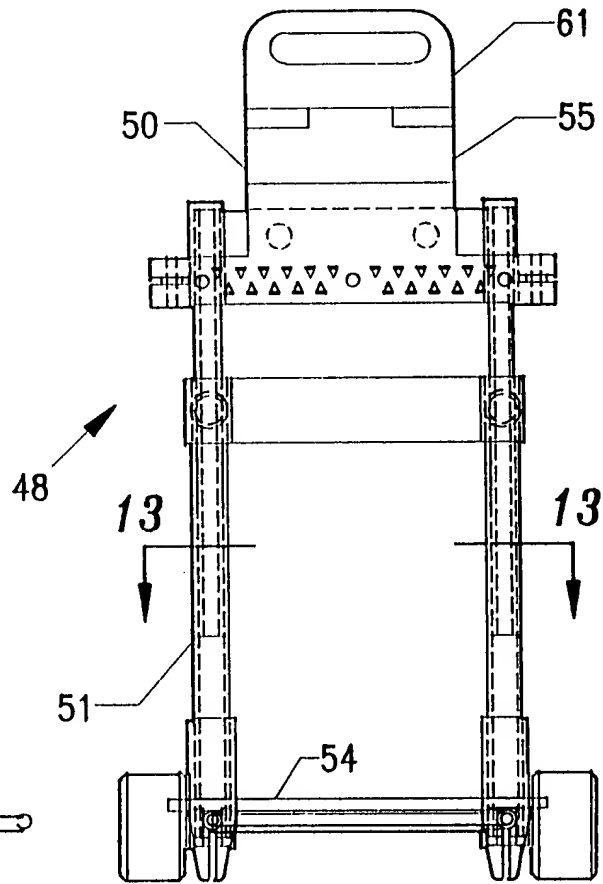


FIG. 11

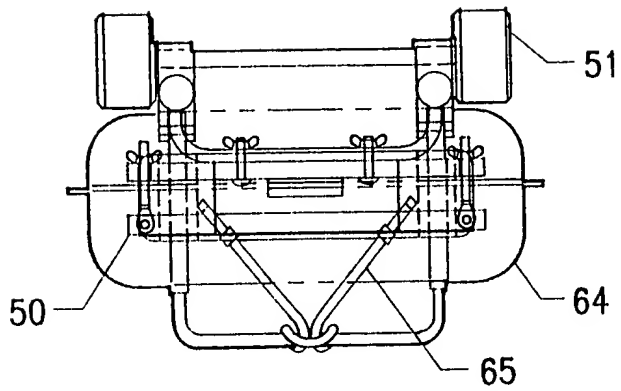


FIG. 15

48

48

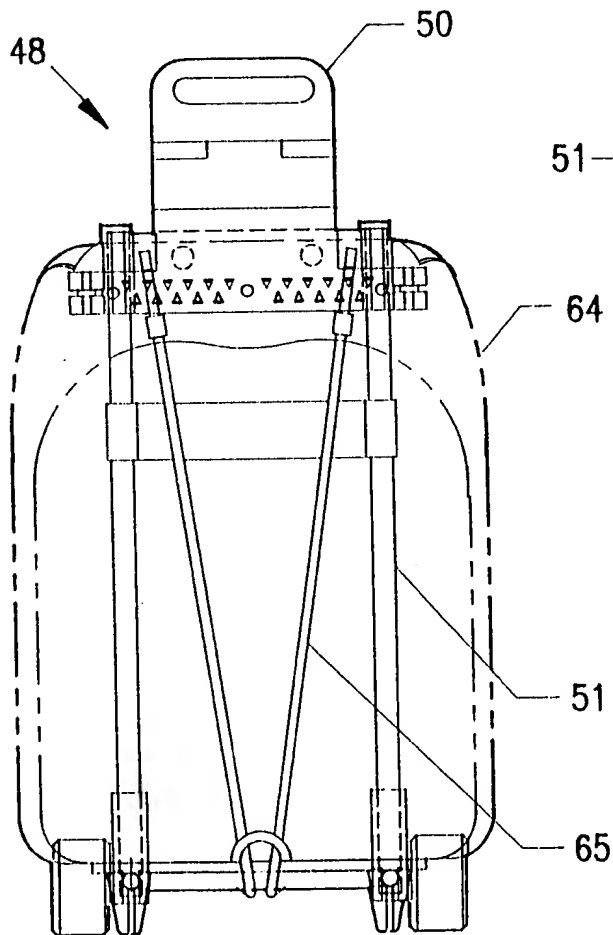


FIG. 16

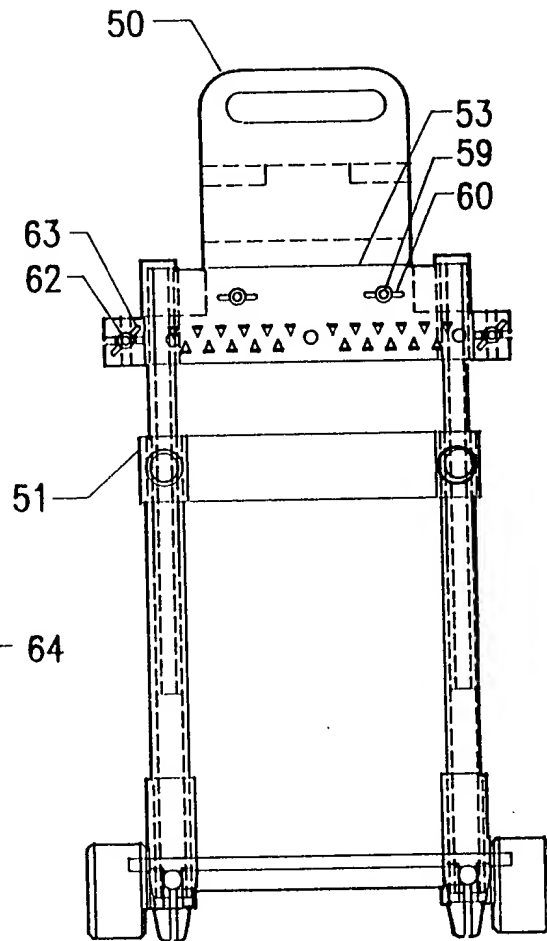


FIG. 14

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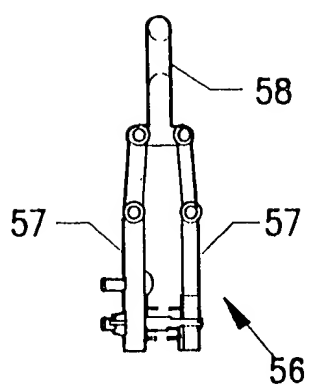


FIG. 19

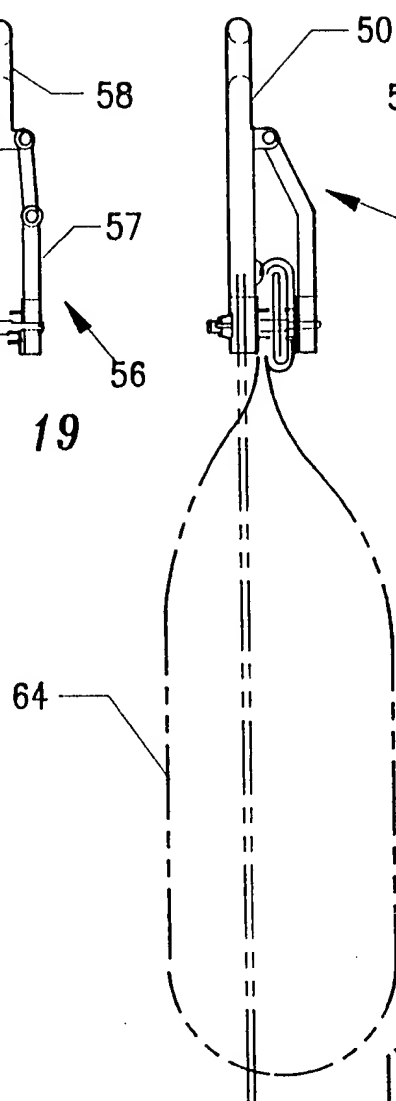


FIG. 18

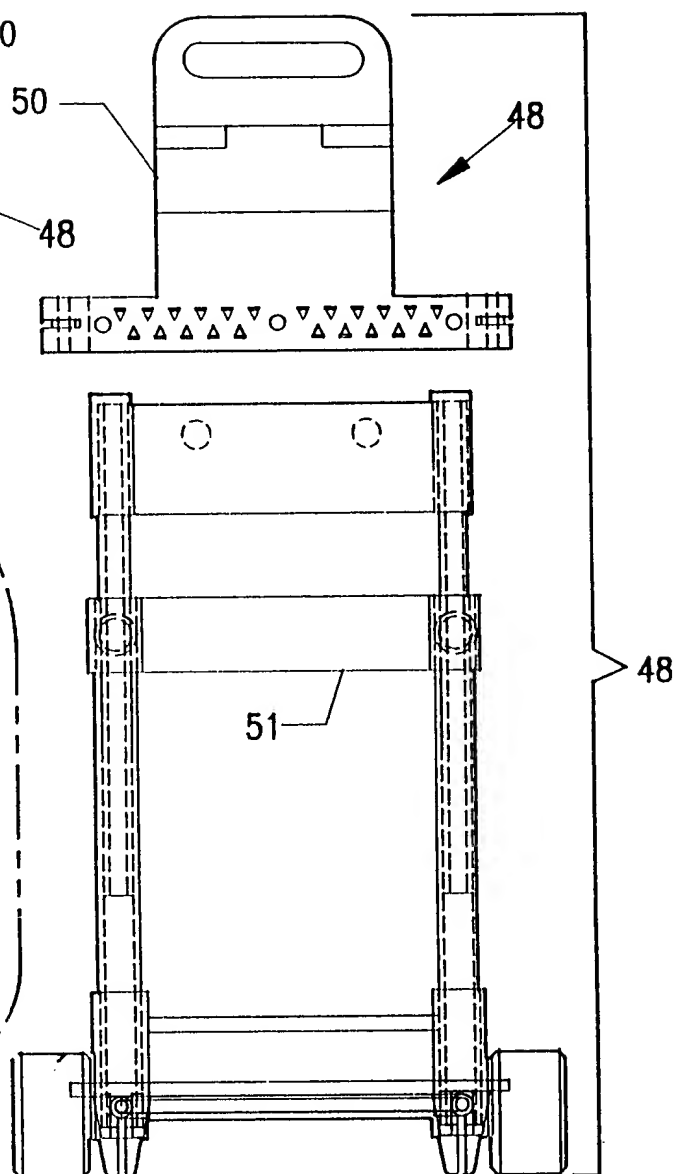


FIG. 17

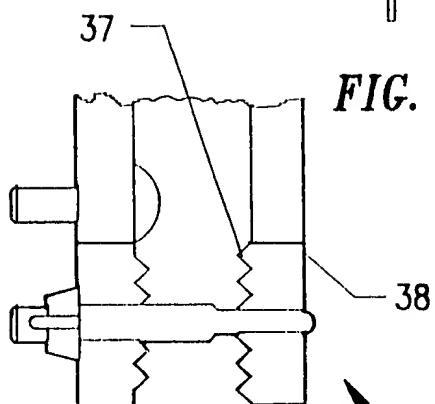


FIG. 21

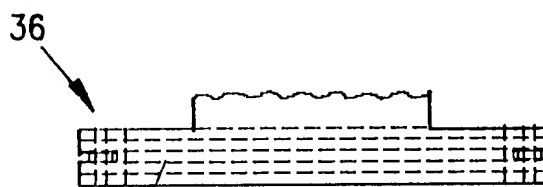


FIG. 20



BAG CARRIER

5 This invention relates to hand carriers and more particularly to a unique hand carrier for transporting large bags filled with loose and granular materials.

10 BACKGROUND OF THE INVENTION

Although many loose and granular products such as fruit, vegetables, grains, salt, sand, trash, fertilizer, dog or cat food, potting soil, cement and the like are stored in large bags, little progress has been made in developing devices for carrying large bags, sacks and other deformable containers, filled with loose or granular materials. The common practices of carrying heavy bags by cradling, gripping and resting on shoulders are inefficient and frequently result in spillage, soiling of clothes and/or physical injuries. One of the principal drawbacks with the present procedures is a tendency to induce high stresses on muscles and vertebrae by elevating heavy bags. Moreover, the likelihood of spillage, spoilage and contamination increases when bags are opened and not securely closed.

25 In spite of the substantial progress and the considerable efforts and large sums expended in developing drugs and surgical procedures for treating muscle and back injuries, one area which has remained completely incapable of resolution, until the present invention, is the avoidance of muscle and back injuries by

improvements in carrying heavy bags. A need exists for simple to use, effective devices for transporting heavy bags and sacks, partially or completely filled with loose or granular materials. This need is particularly urgent with elderly persons who constitute an increasing portion of the population and who must transport heavy bags from store to home or must lift to pour and use the contents of bags. Many women also have difficulty in lifting and transporting bags weighing 10 lbs. or more.

SUMMARY OF THE INVENTION

All of the drawbacks and difficulties encountered with prior practices are completely overcome with the present invention. In order to overcome these drawbacks, a dedicated bag and sack carrier is provided which is effective and easy to use. One benefit of the invention is that heavy bags and sacks need only to be elevated by an amount which is necessary to transport them. Another benefit is that the carrier can be used for sealing previously opened bags and sacks.

In employing the teaching of the present invention, a plurality of alternate constructions can be adopted to achieve the desired results and capabilities. In this disclosure, some alternate constructions are discussed. However, these embodiments are intended as examples and should not be considered as limiting.

In this invention, resides certain features which individually and collectively contribute to its ability to reduce injuries and spillage during the carrying of heavy bags and sacks containing

loose or granular materials. In a first aspect of the invention the carrier is intended to be used in confined areas and for carrying light and moderately heavy bags and sacks. The carrier is comprised of a pair of elongated pivotally connected members for gripping upper portions of bags and sacks and a handle which is attached to the gripping members for carrying the bags and sacks in a suspended manner. At least one of the members has a plurality of small portions which protrude inwardly to grip the bags and sacks. An additional advantage is the ability to utilize the carrier as a secure closing device.

In a second aspect of the invention, the carrier is intended to be used for carrying heavy and/or large bags and sacks. The carrier is used in combination with a 2-wheel cart having an adjustable shelf for supporting the bottom of a bag or sack. The height of the cart is also adjustable such that different height bags can be supported on the shelf with upper bag portions held by the carrier. One feature of this aspect is that the carrier can be detached from the cart and used without the cart and if desired later reattached. Another feature is that the cart can be collapsed for storage, as its frame is adjustable and its shelf is foldable.

Further features and benefits will become apparent by reference to the drawings and ensuing detailed description of a preferred embodiment which discloses the best mode contemplated in carrying out the invention. The exclusive rights which are claimed are set forth in each of the numbered claims following the detailed

description of the preferred embodiment.

BRIEF DESCRIPTION OF THE DRAWINGS

5 The invention will be better understood and further objects, characterizing features, details and advantages thereof will appear more clearly with reference to the diagrammatic drawings illustrating specific embodiments of the invention by way of non-limiting example only.

10 Fig. 1 is a front view of a bag and sack carrier showing a pair of gripping members in a locked condition.

Fig. 2 is a left side view of Fig. 1.

Fig. 3 is a left side view of a carrier showing the gripping members in an unlocked condition.

15 Fig. 4 is a cross-sectional view taken on the line 4-4 in Fig. 1.

Fig. 5 is a front view showing the bag carrier with a bag shown in phantom.

Fig. 6 is a right side view of Fig. 5.

20 Fig. 7 is a plan view of a second embodiment of the present invention shown in a non-operative condition.

Fig. 8 is a front view of the second embodiment in the condition shown in Fig. 7.

Fig. 9 is a right side view of the second embodiment in the condition shown in Fig. 7.

25 Fig. 10 is a plan view of the second embodiment shown in an alternate condition.

Fig. 11 is a front view of the second embodiment in the condition shown in Fig. 10.

Fig. 12 is a right side view of the second embodiment in the condition shown in Fig. 10.

5 Fig. 13 is a cross-sectional view taken on the line 13-13 in Fig. 11.

Fig. 14 is a rear view of the second embodiment in the condition shown in Fig. 10.

10 Fig. 15 is a plan view of the second embodiment with a bag shown in phantom.

Fig. 16 is a front view of the second embodiment with the bag shown in phantom.

Fig. 17 is an exploded view of the second embodiment.

15 Fig. 18 is a right side view of a third embodiment with a bag shown in phantom.

Fig. 19 is a right side view of a fourth embodiment.

Fig. 20 is a partial front view of a fifth embodiment.

Fig. 21 is an enlarged right side view of the fifth embodiment.

20

DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENT

Referring now to the drawings wherein like numerals designate like and corresponding parts throughout the several views, a bag carrier 30, is shown in Figs. 1 through 6, inclusive, according to
25 the present invention.

One characteristic feature of the present invention is that

portions of bags and sacks are clamped between jaws 32 having gripping surfaces 31. By way of example, in the embodiment of Figs. 1 through 6, the gripping surfaces 31 of a pair of jaws 32 are surfaces having small protuberances, namely triangular tabs 33 which project inwardly between rectangular jaws 32. The gripping surfaces 31 generate high forces for preventing bags and sacks from being inadvertently separated from the carrier 30.

The rectangular jaws 32 are formed by riveting thin metal strips 34 to wood or plastic materials. The triangular tabs 33 are formed in stamping dies by shearing and bending triangular portions of the metal strips 34. Similar gripping surfaces may be formed by molding small protuberances by the usual manner in plastic jaws (not shown).

By way of further example, an alternate form of gripping surface 36 which is contemplated is shown in Figs. 20 and 21 wherein a plurality of triangular ridges 37 extend along the length of one of the jaws 38.

The jaws 32 are attached to a pair of pivotally connected wire arms 39, 40. As shown in Figs. 1 and 2, end portions of the arms 39, 40 extend through apertures in the jaws 32 and threadably engage nuts 41 which retain the arms 39, 40 in the jaws 32. The arms 39, 40 are comprised of spaced apart vertical side portions 42 and connecting top portions 43. A handle 44 which is pivotally attached to one of the arms 39 serves as a means for carrying a bag and a means for tightly clamping the jaws 32 on the bag.

The handle 44 is comprised of a wire portion 45 having end

portions pivotally mounted on one 39 arm and a cylindrical wood or plastic hand portion 46 mounted on the wire portion 45. The clamping and releasing of the jaws 32 is best understood by reference to Figs. 2 and 3. When the jaws 32 are clamped as shown in Fig. 2, the wire portion 45 of the handle 44 constrains the arms 39, 40 from separating from each other. With reference to Fig. 3, the jaws 32 are released by rotating the handle 44 in the direction "A", to allow the jaws 32 to separate from each other in the directions "B".

The manner of using the carrier 30 is shown in Figs. 5 and 6 wherein the carrier 30 is clamped to a bag 47 drawn in phantom. After the jaws 32 are clamped on an upper portion of the bag 47, the bag 47 can be lifted or dragged along a surface with the handle 44. In this way, injuries are reduced since the bag 47 need only be lifted by a small amount or dragged without lifting along a surface.

Referring now to Figs. 7 through 18, inclusive, a second aspect 48 of the invention is shown wherein a carrier 50, according to the invention, is combined with a 2-wheel cart 51. The 2-wheel cart 51 is comprised of a tubular frame 52, an upper bracket 53 for attaching the carrier 50 and a lower shelf 54 for supporting a lower end of a bag or sack. The height of the 2-wheel cart 51 and area of the shelf 54 are adjustable for storage and to accommodate differences in sizes of bags or sacks.

The shelf 54 is telescopic and foldable from a vertical stored portion to a horizontal load supporting position. In this way, the

cart 51 can be reduced in size, as shown in Figs. 8 and 9, for storage in vehicle luggage compartments and used for transporting heavy bags and sacks to and from vehicles.

One of the carrier's jaws 55 serves as a handle and a bracket
5 for attaching the carrier 50 to the cart 51. In Fig. 19, an alternate embodiment 56 is shown wherein a pair of jaws 57 is pivotally connected to a handle 58. With reference to Figs. 7 and 9, the carrier 50 is attached to the cart 51 with a pair of bolts 59 and thumb nuts 60. As shown in 15, when the carrier 50 is
10 detached from the cart 51, it can be independently used to transport bags.

The second jaw 61 is pivotally connected to the first mentioned jaw 55. Referring again to Figs. 7 and 9, an alternate means for clamping jaws 55, 61 is disclosed wherein the jaws 55, 61
15 are clamped with eye bolts 62 and thumb screws 63.

The manner of using this embodiment 48 is illustrated in Figs. 14 and 15 wherein the carrier 50 is clamped to an upper portion of a rather large bag 64 shown in phantom and the lower portion of the bag 64 is supported on the lower shelf 54. Additional retention of
20 the bag is provided by an elastic bungee cord 65 which is attached to the lower shelf 54 and one of the clamps 61.

It will thus be seen that the objects set forth above, among those made apparent from the preceding description, are efficiently attained. Since certain changes may be made in the above constructions without departing from the scope of the invention, it
25 is intended that all matter contained in the above description or

shown in the accompanying drawings shall be interpreted as illustrative and not in a limiting sense.

It is also to be understood that the following claims are intended to cover all of the generic and specific features of the invention herein described, and all statements of the scope of the invention which, as a matter of language, might be said to fall therebetween.

Having described our invention, what we claim as new and desire to secure by Letters Patent is:

1. A carrier for transporting a bag or sack comprised of: a pair of elongated jaws, at least one of said jaws having a gripping surface for retaining a bag or sack; a pair of pivotally connected arms attached to said jaws; a handle attached to at least one of said jaws; and a means for clamping said jaws to said bag or sack.

2. The carrier as recited in claim 1 wherein said gripping surface of said jaw is comprised of a plurality of small outward extending portions for retaining said bag or sack.

3. A carrier for transporting a bag or sack comprised of: a pair of elongated jaws; a pair of wire arms, each of said arms having a pivotally connected upper portion and pair of lower end portions attached to one of said jaws; a thin metal strip attached to at least one of said jaws, said metal strip having a plurality of outward extending tabs for forming a gripping surface; a means for clamping said jaws to a bag or sack; and a handle attached to one of said arms.

4. The carrier as recited in claim 3 wherein said outward extending tabs are triangular.

5. In combination with a cart, a carrier mounted on an upper

portion of said cart, said carrier having a pair of elongated jaws, and a means for clamping said carrier to an upper portion of said bag or sack, and a handle attached to at least one of said jaws.

6. The combination set forth in claim 5 wherein said cart is a 2-wheel cart.

7. The combination set forth in claim 5 wherein said cart has a lower shelf for supporting said bag or sack,

8. The combination set forth in claim 7 wherein said shelf is selectively foldable from a vertical stored position to a horizontal load supporting position.

9. The combination set forth in claim 7 wherein said shelf has an area which is adjustable.

10. The combination set forth in claim 5 wherein said carrier is detachable from said 2-wheel cart.

11. The combination set forth in claim 5 wherein said handle is pivotally connected to both of said jaws.

12. The combination set forth in claim 5 wherein said cart has a height which is adjustable.

13. The combination set forth in claim 5 wherein said means for clamping said carrier to said bag or sack comprises a pair of bolts, each having one end portion pivotally attached to an end portion of one of said jaws and a thumb nut for engaging an opposite end portion of another of said jaws.

14. In combination, a 2-wheel cart, said cart having a tubular frame which is vertically adjustable, and a lower shelf portion attached to said frame which is selectably foldable from a vertical stored position to a horizontal load supporting position, and a carrier detachably mounted on an upper portion of said cart for transporting a bag or sack, said carrier having a pair of elongated jaws, each of said jaws having a gripping surface for retaining said upper portion of a bag or sack, a means for clamping said carrier to an upper portion of said bag or sack, and a handle attached to one of said jaws.

15. A method for transporting a bag filled with loose or granular materials comprised of the steps of gripping an upper portion of said bag between a pair of jaws of a clamp, said clamp having a handle attached to at least one of said jaws; grasping said handle with a hand; and transporting said bag with said hand.

16. The method for transporting a bag filled with loose or granular materials according to claim 15 wherein said bag is dragged with said hand along a surface.

17. The method for transporting a bag filled with loose or granular materials according to claim 15 further comprising the step of elevating said bag after said handle is grasped with said hand.

18. The method for transporting a bag filled with loose or granular materials according to claim 15 further comprising the step of supporting said bag on a wheeled cart before said step of gripping an upper portion of said bag between a pair of jaws.

19. The method for transporting a bag filled with loose or granular materials according to claim 18 further comprising the step of attaching a bungee cord to said cart for retaining said bag.

ABSTRACT OF THE DISCLOSURE

A carrier for transporting a bag or a sack containing loose or granular materials. The carrier is comprised of a pair of jaws having gripping surfaces for retaining an upper portion of a bag or sack and a handle for carrying the bag or sack in a slightly elevated position or by dragging on a surface. In a first aspect of the invention, the gripping surfaces are formed by shearing and bending a plurality of triangular tabs in metal strips which are applied to the jaws. In a second aspect of the invention, the carrier is attached to a 2-wheel cart in a manner which allows the carrier to be used in combination with the cart or detached and used independently.

COMBINED DECLARATION AND POWER OF ATTORNEY

We, the below named inventors, hereby declare that:

Our residence, post office addresses and citizenships are as stated below next to our names.

We believe we are the original, first and joint inventors of the subject matter which is claimed and for which a patent is sought on the invention entitled **BAG CARRIER**, the specification of which is attached hereto.

We hereby state that we have reviewed and understand the contents of the above-identified specification, including the claims, as amended by any amendment specifically referred to herein.

We acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56.

We hereby appoint Alex Rhodes, Registration No. 26,797, to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith. Address all correspondence to Alex Rhodes at 30100 Telegraph Road, Suite 460, Bingham Farms, MI 48025 and all telephone calls to (248) 646-4400.

We hereby declare that all statements made herein of our own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full Name of First Inventor: Joseph J. Berke

Inventor's Signature: Joseph J. Berke M.D.

Date: Dec 1st 1998

Country of Citizenship: U.S.A.

Residence: 2063 Long Lake Shore, West Bloomfield, MI 48323

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Full Name of Second Joint Inventor: Charles T. Michael

Inventor's Signature: Charles T. Michael

Date: 12/01/98

Country of Citizenship: U.S.A.

Residence: 5698 Firwood, Troy, Michigan 48098

Post Office Address: 5698 Firwood, Troy, Michigan 48098

ASSIGNMENT FOR UNFILED APPLICATION FOR UNITED STATES PATENT

WHEREAS, We, Joseph J. Berke of 2063 Long Lake Shore, West Bloomfield, Michigan 48323, U.S.A. (hereinafter referred to as ASSIGNEE) and Charles T. Michael of 5698 Firwood, Troy, Michigan 48098, U.S.A. (hereinafter referred to as ASSIGNOR), have invented and own a certain invention entitled **BAG CARRIER** for which application for Letters Patent of the United States has been executed on even date herewith;

WHEREAS, ASSIGNEE is desirous of acquiring the entire interest in, to and under said invention and in, to and under Letters Patent or similar legal protection to be obtained therefor in the United States and in any and all foreign countries.

NOW, THEREFORE, In consideration of the payment by ASSIGNEE to ASSIGNOR of the sum of One Dollar (\$1.00), the receipt of which is hereby acknowledged, and for all other good and valuable consideration, ASSIGNOR hereby sells, assigns and transfers to ASSIGNEE, and the successors, assigns, and legal representatives of the ASSIGNEE, his entire right, title and interest to said invention in the United States, its territorial possessions and in any and all foreign countries, including all rights to claim priority, in and to any and all improvements which are disclosed in said application for Letters Patent, and, in and to, all Letters Patent to be obtained for said invention by the above application or any continuation, division, renewal, or substitute thereof, and as to letters patent any reissue or re-examination thereof.

ASSIGNOR hereby covenants that no assignment, sale, agreement or encumbrance has been or will be made or entered into which would conflict with this assignment.

ASSIGNOR further covenants that ASSIGNEE will, upon his request, be provided promptly with all pertinent facts and documents relating to said application, said invention and said Letters Patent and legal equivalents in foreign countries as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation or proceeding related thereto and will promptly execute and deliver to ASSIGNEE or his legal representative any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce said application, said invention and said Letters Patent and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this

1 day of December, 1998.

Charles T. Michael
Charles T. Michael, Assignor

**VERIFIED STATEMENT CLAIMING SMALL ENTITY STATUS
(37 CFR 1.9(f) & 1.27(b))—INDEPENDENT INVENTOR**Docket Number (Optional)
1374-098Applicant or Patentee: Joseph J. Berke & Charles T. MichaelApplication or Patent No.: New Patent Application

Filed or Issued: _____

Title: BAG CARRIER

As a below named inventor, I hereby declare that I qualify as an independent inventor as defined in 37 CFR 1.9(c) for purposes of paying reduced fees to the Patent and Trademark Office described in:

- ☒ the specification filed herewith with title as listed above.
☐ the application identified above.
☐ the patent identified above.

I have not assigned, granted, conveyed, or licensed, and am under no obligation under contract or law to assign, grant, convey, or license, any rights in the invention to any person who would not qualify as an independent inventor under 37 CFR 1.9(c) if that person had made the invention, or to any concern which would not qualify as a small business concern under 37 CFR 1.9(d) or a nonprofit organization under 37 CFR 1.9(e).

Each person, concern, or organization to which I have assigned, granted, conveyed, or licensed or am under an obligation under contract or law to assign, grant, convey, or license any rights in the invention is listed below:

- ☐ No such person, concern, or organization exists.
☒ Each such person, concern, or organization is listed below.

Joseph J. Berke
2063 Long Lake Shore
West Bloomfield, MI 48323

Separate verified statements are required from each named person, concern, or organization having rights to the invention availing to their status as small entities. (37 CFR 1.27)

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Joseph J. Berke

NAME OF INVENTOR

Signature of Inventor

Date

NAME OF INVENTOR

Signature of Inventor

Date

Charles T. Michael
NAME OF INVENTOR

Signature of Inventor

Date

Office Action Summary

Application No.
09/207,634

Applicant(s)
Berke et al.

Examiner
Bridget Avery

Group Art Unit
3618



☒ Responsive to communication(s) filed on Mar 29, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5-14 and 20-28 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 11 is/are allowed.

☒ Claim(s) 5-10, 12-14, and 20-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

1. In response to applicant's request for reconsideration and the submission of the English translation of the Mascio (Italy 574172) reference, the finality of the previous office action has been withdrawn. An action on the merits of claims 5-14 and 20-28 follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-8, 10, 20, 21 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj (US Patent 5,697,624) in view of White (US Patent 5,621,950).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag

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or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and White disclose the features described above.

Faraj and White fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include an adjustable shelf with telescoping tubes to support items of various sizes.

5. Claim 12 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Smith (US Patent 4,044,784).

Faraj and White disclose the features described above.

Faraj and White fail to disclose a cart having an adjustable height.

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Smith discloses an adjustable height walking aid cane.

Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

6. Claim 14 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30).

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

7. Claims 5-8, 10, 13 and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of Brown (US Patent 5,301,393).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack. With respect to claim 22, it is noted that Brown's clip is constructed of all metal (see column 1, lines 66) therefore the metal strip claimed by applicant is shown as an integral feature with the jaws of Brown. With respect to claim 23, see column 5, lines 51-54. Note, the bosses and holes, taught by Brown, are functionally equivalent to the applicant's claimed bolt and thumb nut. The

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selection of any of these known equivalents to attach elements would be within the level of ordinary skill in the art.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include an adjustable shelf with telescoping tubes to support items of various sizes.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Smith (US Patent 4,044,784).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose a cart having an adjustable height.

Smith discloses an adjustable height walking aid cane.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

10. Claim 14 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

Allowable Subject Matter

11. Claim 11 is allowed.

Response to Arguments

12. Applicant's arguments with respect to claims 5-14 and 20-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Comeaux shows a garbage bag support and storage device.


Tseng shows a paper holder.

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14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number (703) 308-2086.


Avery

April 12, 2001


ANNE MARIE BOEHLER
Primary Examiner

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| FORM PTO-892 | | U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE | | SERIAL NO. 09/207,634 | GROUP ART UNIT 3618 | ATTACHMENT TO PAPER NO. | 9 |
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| EXAMINER Bridget Avery | | | DATE April 12, 2001 | | | | |
| * A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05(a).) | | | | | | | |